

AMENDED IN SENATE SEPTEMBER 5, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 556

Introduced by Assembly Member Salas

(Coauthors: Assembly Members Brown, Chávez, and Yamada)

(Coauthors: Senators Corbett, Evans, and Hueso)

February 20, 2013

An act to amend Sections 12920, 12921, 12926, and 12940 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as amended, Salas. Fair Employment and Housing Act: military veterans.

Existing

(1) Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation.

This bill would add “military and veteran status,” as defined, to the list of categories protected from employment discrimination under the act. The bill would also provide an exemption for an inquiry by an employer regarding military or veteran status for the purpose of awarding a veteran’s preference as permitted by law.

(2) *This bill would incorporate additional changes to Section 12940 of the Government Code made by SB 292 that would become operative if both bills are chaptered on or before January 1, 2014, and this bill is chaptered last.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12920 of the Government Code is
2 amended to read:

3 12920. It is hereby declared as the public policy of this state
4 that it is necessary to protect and safeguard the right and
5 opportunity of all persons to seek, obtain, and hold employment
6 without discrimination or abridgment on account of race, religious
7 creed, color, national origin, ancestry, physical disability, mental
8 disability, medical condition, genetic information, marital status,
9 sex, gender, gender identity, gender expression, age, sexual
10 orientation, or military and veteran status.

11 It is recognized that the practice of denying employment
12 opportunity and discriminating in the terms of employment for
13 these reasons foments domestic strife and unrest, deprives the state
14 of the fullest utilization of its capacities for development and
15 advancement, and substantially and adversely affects the interests
16 of employees, employers, and the public in general.

17 Further, the practice of discrimination because of race, color,
18 religion, sex, gender, gender identity, gender expression, sexual
19 orientation, marital status, national origin, ancestry, familial status,
20 source of income, disability, or genetic information in housing
21 accommodations is declared to be against public policy.

22 It is the purpose of this part to provide effective remedies that
23 will eliminate these discriminatory practices.

24 This part shall be deemed an exercise of the police power of the
25 state for the protection of the welfare, health, and peace of the
26 people of this state.

27 SEC. 2. Section 12921 of the Government Code is amended
28 to read:

29 12921. (a) The opportunity to seek, obtain, and hold
30 employment without discrimination because of race, religious
31 creed, color, national origin, ancestry, physical disability, mental

1 disability, medical condition, genetic information, marital status,
2 sex, gender, gender identity, gender expression, age, sexual
3 orientation, or military and veteran status is hereby recognized as
4 and declared to be a civil right.

5 (b) The opportunity to seek, obtain, and hold housing without
6 discrimination because of race, color, religion, sex, gender, gender
7 identity, gender expression, sexual orientation, marital status,
8 national origin, ancestry, familial status, source of income,
9 disability, genetic information, or any other basis prohibited by
10 Section 51 of the Civil Code is hereby recognized as and declared
11 to be a civil right.

12 SEC. 3. Section 12926 of the Government Code is amended
13 to read:

14 12926. As used in this part in connection with unlawful
15 practices, unless a different meaning clearly appears from the
16 context:

17 (a) “Affirmative relief” or “prospective relief” includes the
18 authority to order reinstatement of an employee, awards of backpay,
19 reimbursement of out-of-pocket expenses, hiring, transfers,
20 reassignments, grants of tenure, promotions, cease and desist
21 orders, posting of notices, training of personnel, testing, expunging
22 of records, reporting of records, and any other similar relief that
23 is intended to correct unlawful practices under this part.

24 (b) “Age” refers to the chronological age of any individual who
25 has reached his or her 40th birthday.

26 (c) “Employee” does not include any individual employed by
27 his or her parents, spouse, or child, or any individual employed
28 under a special license in a nonprofit sheltered workshop or
29 rehabilitation facility.

30 (d) “Employer” includes any person regularly employing five
31 or more persons, or any person acting as an agent of an employer,
32 directly or indirectly, the state or any political or civil subdivision
33 of the state, and cities, except as follows:

34 “Employer” does not include a religious association or
35 corporation not organized for private profit.

36 (e) “Employment agency” includes any person undertaking for
37 compensation to procure employees or opportunities to work.

38 (f) “Essential functions” means the fundamental job duties of
39 the employment position the individual with a disability holds or

1 desires. “Essential functions” does not include the marginal
2 functions of the position.

3 (1) A job function may be considered essential for any of several
4 reasons, including, but not limited to, any one or more of the
5 following:

6 (A) The function may be essential because the reason the
7 position exists is to perform that function.

8 (B) The function may be essential because of the limited number
9 of employees available among whom the performance of that job
10 function can be distributed.

11 (C) The function may be highly specialized, so that the
12 incumbent in the position is hired for his or her expertise or ability
13 to perform the particular function.

14 (2) Evidence of whether a particular function is essential
15 includes, but is not limited to, the following:

16 (A) The employer’s judgment as to which functions are essential.

17 (B) Written job descriptions prepared before advertising or
18 interviewing applicants for the job.

19 (C) The amount of time spent on the job performing the function.

20 (D) The consequences of not requiring the incumbent to perform
21 the function.

22 (E) The terms of a collective bargaining agreement.

23 (F) The work experiences of past incumbents in the job.

24 (G) The current work experience of incumbents in similar jobs.

25 (g) (1) “Genetic information” means, with respect to any
26 individual, information about any of the following:

27 (A) The individual’s genetic tests.

28 (B) The genetic tests of family members of the individual.

29 (C) The manifestation of a disease or disorder in family members
30 of the individual.

31 (2) “Genetic information” includes any request for, or receipt
32 of, genetic services, or participation in clinical research that
33 includes genetic services, by an individual or any family member
34 of the individual.

35 (3) “Genetic information” does not include information about
36 the sex or age of any individual.

37 (h) “Labor organization” includes any organization that exists
38 and is constituted for the purpose, in whole or in part, of collective
39 bargaining or of dealing with employers concerning grievances,

1 terms or conditions of employment, or of other mutual aid or
2 protection.

3 (i) “Medical condition” means either of the following:

4 (1) Any health impairment related to or associated with a
5 diagnosis of cancer or a record or history of cancer.

6 (2) Genetic characteristics. For purposes of this section, “genetic
7 characteristics” means either of the following:

8 (A) Any scientifically or medically identifiable gene or
9 chromosome, or combination or alteration thereof, that is known
10 to be a cause of a disease or disorder in a person or his or her
11 offspring, or that is determined to be associated with a statistically
12 increased risk of development of a disease or disorder, and that is
13 presently not associated with any symptoms of any disease or
14 disorder.

15 (B) Inherited characteristics that may derive from the individual
16 or family member, that are known to be a cause of a disease or
17 disorder in a person or his or her offspring, or that are determined
18 to be associated with a statistically increased risk of development
19 of a disease or disorder, and that are presently not associated with
20 any symptoms of any disease or disorder.

21 (j) “Mental disability” includes, but is not limited to, all of the
22 following:

23 (1) Having any mental or psychological disorder or condition,
24 such as intellectual disability, organic brain syndrome, emotional
25 or mental illness, or specific learning disabilities, that limits a
26 major life activity. For purposes of this section:

27 (A) “Limits” shall be determined without regard to mitigating
28 measures, such as medications, assistive devices, or reasonable
29 accommodations, unless the mitigating measure itself limits a
30 major life activity.

31 (B) A mental or psychological disorder or condition limits a
32 major life activity if it makes the achievement of the major life
33 activity difficult.

34 (C) “Major life activities” shall be broadly construed and shall
35 include physical, mental, and social activities and working.

36 (2) Any other mental or psychological disorder or condition not
37 described in paragraph (1) that requires special education or related
38 services.

1 (3) Having a record or history of a mental or psychological
2 disorder or condition described in paragraph (1) or (2), which is
3 known to the employer or other entity covered by this part.

4 (4) Being regarded or treated by the employer or other entity
5 covered by this part as having, or having had, any mental condition
6 that makes achievement of a major life activity difficult.

7 (5) Being regarded or treated by the employer or other entity
8 covered by this part as having, or having had, a mental or
9 psychological disorder or condition that has no present disabling
10 effect, but that may become a mental disability as described in
11 paragraph (1) or (2).

12 “Mental disability” does not include sexual behavior disorders,
13 compulsive gambling, kleptomania, pyromania, or psychoactive
14 substance use disorders resulting from the current unlawful use of
15 controlled substances or other drugs.

16 (k) “Military and veteran status” means a member or veteran
17 of the United States Armed Forces, United States Armed Forces
18 Reserve, the United States National Guard, and the California
19 National Guard.

20 (l) “On the bases enumerated in this part” means or refers to
21 discrimination on the basis of one or more of the following: race,
22 religious creed, color, national origin, ancestry, physical disability,
23 mental disability, medical condition, genetic information, marital
24 status, sex, age, sexual orientation, or military and veteran status.

25 (m) “Physical disability” includes, but is not limited to, all of
26 the following:

27 (1) Having any physiological disease, disorder, condition,
28 cosmetic disfigurement, or anatomical loss that does both of the
29 following:

30 (A) Affects one or more of the following body systems:
31 neurological, immunological, musculoskeletal, special sense
32 organs, respiratory, including speech organs, cardiovascular,
33 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
34 and endocrine.

35 (B) Limits a major life activity. For purposes of this section:

36 (i) “Limits” shall be determined without regard to mitigating
37 measures such as medications, assistive devices, prosthetics, or
38 reasonable accommodations, unless the mitigating measure itself
39 limits a major life activity.

1 (ii) A physiological disease, disorder, condition, cosmetic
2 disfigurement, or anatomical loss limits a major life activity if it
3 makes the achievement of the major life activity difficult.

4 (iii) “Major life activities” shall be broadly construed and
5 includes physical, mental, and social activities and working.

6 (2) Any other health impairment not described in paragraph (1)
7 that requires special education or related services.

8 (3) Having a record or history of a disease, disorder, condition,
9 cosmetic disfigurement, anatomical loss, or health impairment
10 described in paragraph (1) or (2), which is known to the employer
11 or other entity covered by this part.

12 (4) Being regarded or treated by the employer or other entity
13 covered by this part as having, or having had, any physical
14 condition that makes achievement of a major life activity difficult.

15 (5) Being regarded or treated by the employer or other entity
16 covered by this part as having, or having had, a disease, disorder,
17 condition, cosmetic disfigurement, anatomical loss, or health
18 impairment that has no present disabling effect but may become
19 a physical disability as described in paragraph (1) or (2).

20 (6) “Physical disability” does not include sexual behavior
21 disorders, compulsive gambling, kleptomania, pyromania, or
22 psychoactive substance use disorders resulting from the current
23 unlawful use of controlled substances or other drugs.

24 (n) Notwithstanding subdivisions (j) and (m), if the definition
25 of “disability” used in the federal Americans with Disabilities Act
26 of 1990 (Public Law 101-336) would result in broader protection
27 of the civil rights of individuals with a mental disability or physical
28 disability, as defined in subdivision (j) or (m), or would include
29 any medical condition not included within those definitions, then
30 that broader protection or coverage shall be deemed incorporated
31 by reference into, and shall prevail over conflicting provisions of,
32 the definitions in subdivisions (j) and (m).

33 (o) “Race, religious creed, color, national origin, ancestry,
34 physical disability, mental disability, medical condition, genetic
35 information, marital status, sex, age, sexual orientation, or military
36 and veteran status” includes a perception that the person has any
37 of those characteristics or that the person is associated with a
38 person who has, or is perceived to have, any of those
39 characteristics.

1 (p) “Reasonable accommodation” may include either of the
2 following:

3 (1) Making existing facilities used by employees readily
4 accessible to, and usable by, individuals with disabilities.

5 (2) Job restructuring, part-time or modified work schedules,
6 reassignment to a vacant position, acquisition or modification of
7 equipment or devices, adjustment or modifications of examinations,
8 training materials or policies, the provision of qualified readers or
9 interpreters, and other similar accommodations for individuals
10 with disabilities.

11 (q) “Religious creed,” “religion,” “religious observance,”
12 “religious belief,” and “creed” include all aspects of religious
13 belief, observance, and practice, including religious dress and
14 grooming practices. “Religious dress practice” shall be construed
15 broadly to include the wearing or carrying of religious clothing,
16 head or face coverings, jewelry, artifacts, and any other item that
17 is part of the observance by an individual of his or her religious
18 creed. “Religious grooming practice” shall be construed broadly
19 to include all forms of head, facial, and body hair that are part of
20 the observance by an individual of his or her religious creed.

21 (r) (1) “Sex” includes, but is not limited to, the following:

22 (A) Pregnancy or medical conditions related to pregnancy.

23 (B) Childbirth or medical conditions related to childbirth.

24 (C) Breastfeeding or medical conditions related to breastfeeding.

25 (2) “Sex” also includes, but is not limited to, a person’s gender.
26 “Gender” means sex, and includes a person’s gender identity and
27 gender expression. “Gender expression” means a person’s
28 gender-related appearance and behavior whether or not
29 stereotypically associated with the person’s assigned sex at birth.

30 (s) “Sexual orientation” means heterosexuality, homosexuality,
31 and bisexuality.

32 (t) “Supervisor” means any individual having the authority, in
33 the interest of the employer, to hire, transfer, suspend, lay off,
34 recall, promote, discharge, assign, reward, or discipline other
35 employees, or the responsibility to direct them, or to adjust their
36 grievances, or effectively to recommend that action, if, in
37 connection with the foregoing, the exercise of that authority is not
38 of a merely routine or clerical nature, but requires the use of
39 independent judgment.

1 (u) “Undue hardship” means an action requiring significant
2 difficulty or expense, when considered in light of the following
3 factors:

4 (1) The nature and cost of the accommodation needed.

5 (2) The overall financial resources of the facilities involved in
6 the provision of the reasonable accommodations, the number of
7 persons employed at the facility, and the effect on expenses and
8 resources or the impact otherwise of these accommodations upon
9 the operation of the facility.

10 (3) The overall financial resources of the covered entity, the
11 overall size of the business of a covered entity with respect to the
12 number of employees, and the number, type, and location of its
13 facilities.

14 (4) The type of operations, including the composition, structure,
15 and functions of the workforce of the entity.

16 (5) The geographic separateness or administrative or fiscal
17 relationship of the facility or facilities.

18 SEC. 4. Section 12940 of the Government Code is amended
19 to read:

20 12940. It is an unlawful employment practice, unless based
21 upon a bona fide occupational qualification, or, except where based
22 upon applicable security regulations established by the United
23 States or the State of California:

24 (a) For an employer, because of the race, religious creed, color,
25 national origin, ancestry, physical disability, mental disability,
26 medical condition, genetic information, marital status, sex, gender,
27 gender identity, gender expression, age, sexual orientation, or
28 military and veteran status; of any person, to refuse to hire or
29 employ the person or to refuse to select the person for a training
30 program leading to employment, or to bar or to discharge the
31 person from employment or from a training program leading to
32 employment, or to discriminate against the person in compensation
33 or in terms, conditions, or privileges of employment.

34 (1) This part does not prohibit an employer from refusing to
35 hire or discharging an employee with a physical or mental
36 disability, or subject an employer to any legal liability resulting
37 from the refusal to employ or the discharge of an employee with
38 a physical or mental disability, where the employee, because of
39 his or her physical or mental disability, is unable to perform his
40 or her essential duties even with reasonable accommodations, or

1 cannot perform those duties in a manner that would not endanger
2 his or her health or safety or the health or safety of others even
3 with reasonable accommodations.

4 (2) This part does not prohibit an employer from refusing to
5 hire or discharging an employee who, because of the employee's
6 medical condition, is unable to perform his or her essential duties
7 even with reasonable accommodations, or cannot perform those
8 duties in a manner that would not endanger the employee's health
9 or safety or the health or safety of others even with reasonable
10 accommodations. Nothing in this part shall subject an employer
11 to any legal liability resulting from the refusal to employ or the
12 discharge of an employee who, because of the employee's medical
13 condition, is unable to perform his or her essential duties, or cannot
14 perform those duties in a manner that would not endanger the
15 employee's health or safety or the health or safety of others even
16 with reasonable accommodations.

17 (3) Nothing in this part relating to discrimination on account of
18 marital status shall do either of the following:

19 (A) Affect the right of an employer to reasonably regulate, for
20 reasons of supervision, safety, security, or morale, the working of
21 spouses in the same department, division, or facility, consistent
22 with the rules and regulations adopted by the commission.

23 (B) Prohibit bona fide health plans from providing additional
24 or greater benefits to employees with dependents than to those
25 employees without or with fewer dependents.

26 (4) Nothing in this part relating to discrimination on account of
27 sex shall affect the right of an employer to use veteran status as a
28 factor in employee selection or to give special consideration to
29 Vietnam-era veterans.

30 (5) (A) This part does not prohibit an employer from refusing
31 to employ an individual because of his or her age if the law
32 compels or provides for that refusal. Promotions within the existing
33 staff, hiring or promotion on the basis of experience and training,
34 rehiring on the basis of seniority and prior service with the
35 employer, or hiring under an established recruiting program from
36 high schools, colleges, universities, or trade schools do not, in and
37 of themselves, constitute unlawful employment practices.

38 (B) The provisions of this part relating to discrimination on the
39 basis of age do not prohibit an employer from providing health
40 benefits or health care reimbursement plans to retired persons that

1 are altered, reduced, or eliminated when the person becomes
2 eligible for Medicare health benefits. This subparagraph applies
3 to all retiree health benefit plans and contractual provisions or
4 practices concerning retiree health benefits and health care
5 reimbursement plans in effect on or after January 1, 2011.

6 (b) For a labor organization, because of the race, religious creed,
7 color, national origin, ancestry, physical disability, mental
8 disability, medical condition, genetic information, marital status,
9 sex, gender, gender identity, gender expression, age, sexual
10 orientation, or military and veteran status of any person, to exclude,
11 expel, or restrict from its membership the person, or to provide
12 only second-class or segregated membership or to discriminate
13 against any person because of the race, religious creed, color,
14 national origin, ancestry, physical disability, mental disability,
15 medical condition, genetic information, marital status, sex, gender,
16 gender identity, gender expression, age, sexual orientation, or
17 military and veteran status of the person in the election of officers
18 of the labor organization or in the selection of the labor
19 organization's staff or to discriminate in any way against any of
20 its members or against any employer or against any person
21 employed by an employer.

22 (c) For any person to discriminate against any person in the
23 selection or training of that person in any apprenticeship training
24 program or any other training program leading to employment
25 because of the race, religious creed, color, national origin, ancestry,
26 physical disability, mental disability, medical condition, genetic
27 information, marital status, sex, gender, gender identity, gender
28 expression, age, sexual orientation, or military and veteran status
29 of the person discriminated against.

30 (d) For any employer or employment agency to print or circulate
31 or cause to be printed or circulated any publication, or to make
32 any nonjob-related inquiry of an employee or applicant, either
33 verbal or through use of an application form, that expresses,
34 directly or indirectly, any limitation, specification, or discrimination
35 as to race, religious creed, color, national origin, ancestry, physical
36 disability, mental disability, medical condition, genetic information,
37 marital status, sex, gender, gender identity, gender expression,
38 age, sexual orientation, or military and veteran status, or any intent
39 to make any such limitation, specification, or discrimination. This
40 part does not prohibit an employer or employment agency from

1 inquiring into the age of an applicant, or from specifying age
2 limitations, where the law compels or provides for that action.

3 (e) (1) Except as provided in paragraph (2) or (3), for any
4 employer or employment agency to require any medical or
5 psychological examination of an applicant, to make any medical
6 or psychological inquiry of an applicant, to make any inquiry
7 whether an applicant has a mental disability or physical disability
8 or medical condition, or to make any inquiry regarding the nature
9 or severity of a physical disability, mental disability, or medical
10 condition.

11 (2) Notwithstanding paragraph (1), an employer or employment
12 agency may inquire into the ability of an applicant to perform
13 job-related functions and may respond to an applicant's request
14 for reasonable accommodation.

15 (3) Notwithstanding paragraph (1), an employer or employment
16 agency may require a medical or psychological examination or
17 make a medical or psychological inquiry of a job applicant after
18 an employment offer has been made but prior to the
19 commencement of employment duties, provided that the
20 examination or inquiry is job related and consistent with business
21 necessity and that all entering employees in the same job
22 classification are subject to the same examination or inquiry.

23 (f) (1) Except as provided in paragraph (2), for any employer
24 or employment agency to require any medical or psychological
25 examination of an employee, to make any medical or psychological
26 inquiry of an employee, to make any inquiry whether an employee
27 has a mental disability, physical disability, or medical condition,
28 or to make any inquiry regarding the nature or severity of a physical
29 disability, mental disability, or medical condition.

30 (2) Notwithstanding paragraph (1), an employer or employment
31 agency may require any examinations or inquiries that it can show
32 to be job related and consistent with business necessity. An
33 employer or employment agency may conduct voluntary medical
34 examinations, including voluntary medical histories, which are
35 part of an employee health program available to employees at that
36 worksite.

37 (g) For any employer, labor organization, or employment agency
38 to harass, discharge, expel, or otherwise discriminate against any
39 person because the person has made a report pursuant to Section
40 11161.8 of the Penal Code that prohibits retaliation against hospital

1 employees who report suspected patient abuse by health facilities
2 or community care facilities.

3 (h) For any employer, labor organization, employment agency,
4 or person to discharge, expel, or otherwise discriminate against
5 any person because the person has opposed any practices forbidden
6 under this part or because the person has filed a complaint, testified,
7 or assisted in any proceeding under this part.

8 (i) For any person to aid, abet, incite, compel, or coerce the
9 doing of any of the acts forbidden under this part, or to attempt to
10 do so.

11 (j) (1) For an employer, labor organization, employment agency,
12 apprenticeship training program or any training program leading
13 to employment, or any other person, because of race, religious
14 creed, color, national origin, ancestry, physical disability, mental
15 disability, medical condition, genetic information, marital status,
16 sex, gender, gender identity, gender expression, age, sexual
17 orientation, or military and veteran status, to harass an employee,
18 an applicant, or a person providing services pursuant to a contract.
19 Harassment of an employee, an applicant, or a person providing
20 services pursuant to a contract by an employee, other than an agent
21 or supervisor, shall be unlawful if the entity, or its agents or
22 supervisors, knows or should have known of this conduct and fails
23 to take immediate and appropriate corrective action. An employer
24 may also be responsible for the acts of nonemployees, with respect
25 to sexual harassment of employees, applicants, or persons providing
26 services pursuant to a contract in the workplace, where the
27 employer, or its agents or supervisors, knows or should have known
28 of the conduct and fails to take immediate and appropriate
29 corrective action. In reviewing cases involving the acts of
30 nonemployees, the extent of the employer's control and any other
31 legal responsibility that the employer may have with respect to the
32 conduct of those nonemployees shall be considered. An entity shall
33 take all reasonable steps to prevent harassment from occurring.
34 Loss of tangible job benefits shall not be necessary in order to
35 establish harassment.

36 (2) The provisions of this subdivision are declaratory of existing
37 law, except for the new duties imposed on employers with regard
38 to harassment.

39 (3) An employee of an entity subject to this subdivision is
40 personally liable for any harassment prohibited by this section that

1 is perpetrated by the employee, regardless of whether the employer
2 or covered entity knows or should have known of the conduct and
3 fails to take immediate and appropriate corrective action.

4 (4) (A) For purposes of this subdivision only, “employer” means
5 any person regularly employing one or more persons or regularly
6 receiving the services of one or more persons providing services
7 pursuant to a contract, or any person acting as an agent of an
8 employer, directly or indirectly, the state, or any political or civil
9 subdivision of the state, and cities. The definition of “employer”
10 in subdivision (d) of Section 12926 applies to all provisions of this
11 section other than this subdivision.

12 (B) Notwithstanding subparagraph (A), for purposes of this
13 subdivision, “employer” does not include a religious association
14 or corporation not organized for private profit, except as provided
15 in Section 12926.2.

16 (C) For purposes of this subdivision, “harassment” because of
17 sex includes sexual harassment, gender harassment, and harassment
18 based on pregnancy, childbirth, or related medical conditions.

19 (5) For purposes of this subdivision, “a person providing services
20 pursuant to a contract” means a person who meets all of the
21 following criteria:

22 (A) The person has the right to control the performance of the
23 contract for services and discretion as to the manner of
24 performance.

25 (B) The person is customarily engaged in an independently
26 established business.

27 (C) The person has control over the time and place the work is
28 performed, supplies the tools and instruments used in the work,
29 and performs work that requires a particular skill not ordinarily
30 used in the course of the employer’s work.

31 (k) For an employer, labor organization, employment agency,
32 apprenticeship training program, or any training program leading
33 to employment, to fail to take all reasonable steps necessary to
34 prevent discrimination and harassment from occurring.

35 (l) (1) For an employer or other entity covered by this part to
36 refuse to hire or employ a person or to refuse to select a person
37 for a training program leading to employment or to bar or to
38 discharge a person from employment or from a training program
39 leading to employment, or to discriminate against a person in
40 compensation or in terms, conditions, or privileges of employment

1 because of a conflict between the person's religious belief or
2 observance and any employment requirement, unless the employer
3 or other entity covered by this part demonstrates that it has explored
4 any available reasonable alternative means of accommodating the
5 religious belief or observance, including the possibilities of
6 excusing the person from those duties that conflict with his or her
7 religious belief or observance or permitting those duties to be
8 performed at another time or by another person, but is unable to
9 reasonably accommodate the religious belief or observance without
10 undue hardship, as defined in subdivision (u) of Section 12926,
11 on the conduct of the business of the employer or other entity
12 covered by this part. Religious belief or observance, as used in
13 this section, includes, but is not limited to, observance of a Sabbath
14 or other religious holy day or days, reasonable time necessary for
15 travel prior and subsequent to a religious observance, and religious
16 dress practice and religious grooming practice as described in
17 subdivision (q) of Section 12926.

18 (2) An accommodation of an individual's religious dress practice
19 or religious grooming practice is not reasonable if the
20 accommodation requires segregation of the individual from other
21 employees or the public.

22 (3) An accommodation is not required under this subdivision
23 if it would result in a violation of this part or any other law
24 prohibiting discrimination or protecting civil rights, including
25 subdivision (b) of Section 51 of the Civil Code and Section 11135
26 of this code.

27 (m) For an employer or other entity covered by this part to fail
28 to make reasonable accommodation for the known physical or
29 mental disability of an applicant or employee. Nothing in this
30 subdivision or in paragraph (1) or (2) of subdivision (a) shall be
31 construed to require an accommodation that is demonstrated by
32 the employer or other covered entity to produce undue hardship,
33 as defined in subdivision (u) of Section 12926, to its operation.

34 (n) For an employer or other entity covered by this part to fail
35 to engage in a timely, good faith, interactive process with the
36 employee or applicant to determine effective reasonable
37 accommodations, if any, in response to a request for reasonable
38 accommodation by an employee or applicant with a known physical
39 or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

SEC. 4.5. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, ~~or sexual orientation~~ *sexual orientation, or military and veteran status* of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer

1 to any legal liability resulting from the refusal to employ or the
2 discharge of an employee who, because of the employee's medical
3 condition, is unable to perform his or her essential duties, or cannot
4 perform those duties in a manner that would not endanger the
5 employee's health or safety or the health or safety of others even
6 with reasonable accommodations.

7 (3) Nothing in this part relating to discrimination on account of
8 marital status shall do either of the following:

9 (A) Affect the right of an employer to reasonably regulate, for
10 reasons of supervision, safety, security, or morale, the working of
11 spouses in the same department, division, or facility, consistent
12 with the rules and regulations adopted by the commission.

13 (B) Prohibit bona fide health plans from providing additional
14 or greater benefits to employees with dependents than to those
15 employees without or with fewer dependents.

16 (4) Nothing in this part relating to discrimination on account of
17 sex shall affect the right of an employer to use veteran status as a
18 factor in employee selection or to give special consideration to
19 Vietnam-era veterans.

20 (5) (A) This part does not prohibit an employer from refusing
21 to employ an individual because of his or her age if the law
22 compels or provides for that refusal. Promotions within the existing
23 staff, hiring or promotion on the basis of experience and training,
24 rehiring on the basis of seniority and prior service with the
25 employer, or hiring under an established recruiting program from
26 high schools, colleges, universities, or trade schools do not, in and
27 of themselves, constitute unlawful employment practices.

28 (B) The provisions of this part relating to discrimination on the
29 basis of age do not prohibit an employer from providing health
30 benefits or health care reimbursement plans to retired persons that
31 are altered, reduced, or eliminated when the person becomes
32 eligible for Medicare health benefits. This subparagraph applies
33 to all retiree health benefit plans and contractual provisions or
34 practices concerning retiree health benefits and health care
35 reimbursement plans in effect on or after January 1, 2011.

36 (b) For a labor organization, because of the race, religious creed,
37 color, national origin, ancestry, physical disability, mental
38 disability, medical condition, genetic information, marital status,
39 sex, gender, gender identity, gender expression, age, ~~or sexual~~
40 ~~orientation~~ *sexual orientation, or military and veteran status of*

1 any person, to exclude, expel, or restrict from its membership the
2 person, or to provide only second-class or segregated membership
3 or to discriminate against any person because of the race, religious
4 creed, color, national origin, ancestry, physical disability, mental
5 disability, medical condition, genetic information, marital status,
6 sex, gender, gender identity, gender expression, age, ~~or sexual~~
7 ~~orientation~~ *sexual orientation, or military and veteran status* of
8 the person in the election of officers of the labor organization or
9 in the selection of the labor organization's staff or to discriminate
10 in any way against any of its members or against any employer or
11 against any person employed by an employer.

12 (c) For any person to discriminate against any person in the
13 selection or training of that person in any apprenticeship training
14 program or any other training program leading to employment
15 because of the race, religious creed, color, national origin, ancestry,
16 physical disability, mental disability, medical condition, genetic
17 information, marital status, sex, gender, gender identity, gender
18 expression, age, ~~or sexual orientation~~ *sexual orientation, or military*
19 *and veteran status* of the person discriminated against.

20 (d) For any employer or employment agency to print or circulate
21 or cause to be printed or circulated any publication, or to make
22 any nonjob-related inquiry of an employee or applicant, either
23 verbal or through use of an application form, that expresses,
24 directly or indirectly, any limitation, specification, or discrimination
25 as to race, religious creed, color, national origin, ancestry, physical
26 disability, mental disability, medical condition, genetic information,
27 marital status, sex, gender, gender identity, gender expression,
28 age, ~~or sexual orientation~~, *sexual orientation, or military and*
29 *veteran status*, or any intent to make any such limitation,
30 specification, or discrimination. This part does not prohibit an
31 employer or employment agency from inquiring into the age of
32 an applicant, or from specifying age limitations, where the law
33 compels or provides for that action.

34 (e) (1) Except as provided in paragraph (2) or (3), for any
35 employer or employment agency to require any medical or
36 psychological examination of an applicant, to make any medical
37 or psychological inquiry of an applicant, to make any inquiry
38 whether an applicant has a mental disability or physical disability
39 or medical condition, or to make any inquiry regarding the nature

1 or severity of a physical disability, mental disability, or medical
2 condition.

3 (2) Notwithstanding paragraph (1), an employer or employment
4 agency may inquire into the ability of an applicant to perform
5 job-related functions and may respond to an applicant's request
6 for reasonable accommodation.

7 (3) Notwithstanding paragraph (1), an employer or employment
8 agency may require a medical or psychological examination or
9 make a medical or psychological inquiry of a job applicant after
10 an employment offer has been made but prior to the
11 commencement of employment duties, provided that the
12 examination or inquiry is job related and consistent with business
13 necessity and that all entering employees in the same job
14 classification are subject to the same examination or inquiry.

15 (f) (1) Except as provided in paragraph (2), for any employer
16 or employment agency to require any medical or psychological
17 examination of an employee, to make any medical or psychological
18 inquiry of an employee, to make any inquiry whether an employee
19 has a mental disability, physical disability, or medical condition,
20 or to make any inquiry regarding the nature or severity of a physical
21 disability, mental disability, or medical condition.

22 (2) Notwithstanding paragraph (1), an employer or employment
23 agency may require any examinations or inquiries that it can show
24 to be job related and consistent with business necessity. An
25 employer or employment agency may conduct voluntary medical
26 examinations, including voluntary medical histories, which are
27 part of an employee health program available to employees at that
28 worksite.

29 (g) For any employer, labor organization, or employment agency
30 to harass, discharge, expel, or otherwise discriminate against any
31 person because the person has made a report pursuant to Section
32 11161.8 of the Penal Code that prohibits retaliation against hospital
33 employees who report suspected patient abuse by health facilities
34 or community care facilities.

35 (h) For any employer, labor organization, employment agency,
36 or person to discharge, expel, or otherwise discriminate against
37 any person because the person has opposed any practices forbidden
38 under this part or because the person has filed a complaint, testified,
39 or assisted in any proceeding under this part.

1 (i) For any person to aid, abet, incite, compel, or coerce the
2 doing of any of the acts forbidden under this part, or to attempt to
3 do so.

4 (j) (1) For an employer, labor organization, employment agency,
5 apprenticeship training program or any training program leading
6 to employment, or any other person, because of race, religious
7 creed, color, national origin, ancestry, physical disability, mental
8 disability, medical condition, genetic information, marital status,
9 sex, gender, gender identity, gender expression, age, ~~or sexual~~
10 ~~orientation, sexual orientation, or military and veteran status~~, to
11 harass an employee, an applicant, or a person providing services
12 pursuant to a contract. Harassment of an employee, an applicant,
13 or a person providing services pursuant to a contract by an
14 employee, other than an agent or supervisor, shall be unlawful if
15 the entity, or its agents or supervisors, knows or should have known
16 of this conduct and fails to take immediate and appropriate
17 corrective action. An employer may also be responsible for the
18 acts of nonemployees, with respect to sexual harassment of
19 employees, applicants, or persons providing services pursuant to
20 a contract in the workplace, where the employer, or its agents or
21 supervisors, knows or should have known of the conduct and fails
22 to take immediate and appropriate corrective action. In reviewing
23 cases involving the acts of nonemployees, the extent of the
24 employer's control and any other legal responsibility that the
25 employer may have with respect to the conduct of those
26 nonemployees shall be considered. An entity shall take all
27 reasonable steps to prevent harassment from occurring. Loss of
28 tangible job benefits shall not be necessary in order to establish
29 harassment.

30 (2) The provisions of this subdivision are declaratory of existing
31 law, except for the new duties imposed on employers with regard
32 to harassment.

33 (3) An employee of an entity subject to this subdivision is
34 personally liable for any harassment prohibited by this section that
35 is perpetrated by the employee, regardless of whether the employer
36 or covered entity knows or should have known of the conduct and
37 fails to take immediate and appropriate corrective action.

38 (4) (A) For purposes of this subdivision only, "employer" means
39 any person regularly employing one or more persons or regularly
40 receiving the services of one or more persons providing services

1 pursuant to a contract, or any person acting as an agent of an
2 employer, directly or indirectly, the state, or any political or civil
3 subdivision of the state, and cities. The definition of “employer”
4 in subdivision (d) of Section 12926 applies to all provisions of this
5 section other than this subdivision.

6 (B) Notwithstanding subparagraph (A), for purposes of this
7 subdivision, “employer” does not include a religious association
8 or corporation not organized for private profit, except as provided
9 in Section 12926.2.

10 (C) For purposes of this subdivision, “harassment” because of
11 sex includes sexual harassment, gender harassment, and harassment
12 based on pregnancy, childbirth, or related medical conditions.
13 *Sexually harassing conduct need not be motivated by sexual desire.*

14 (5) For purposes of this subdivision, “a person providing services
15 pursuant to a contract” means a person who meets all of the
16 following criteria:

17 (A) The person has the right to control the performance of the
18 contract for services and discretion as to the manner of
19 performance.

20 (B) The person is customarily engaged in an independently
21 established business.

22 (C) The person has control over the time and place the work is
23 performed, supplies the tools and instruments used in the work,
24 and performs work that requires a particular skill not ordinarily
25 used in the course of the employer’s work.

26 (k) For an employer, labor organization, employment agency,
27 apprenticeship training program, or any training program leading
28 to employment, to fail to take all reasonable steps necessary to
29 prevent discrimination and harassment from occurring.

30 (l) (1) For an employer or other entity covered by this part to
31 refuse to hire or employ a person or to refuse to select a person
32 for a training program leading to employment or to bar or to
33 discharge a person from employment or from a training program
34 leading to employment, or to discriminate against a person in
35 compensation or in terms, conditions, or privileges of employment
36 because of a conflict between the person’s religious belief or
37 observance and any employment requirement, unless the employer
38 or other entity covered by this part demonstrates that it has explored
39 any available reasonable alternative means of accommodating the
40 religious belief or observance, including the possibilities of

1 excusing the person from those duties that conflict with his or her
2 religious belief or observance or permitting those duties to be
3 performed at another time or by another person, but is unable to
4 reasonably accommodate the religious belief or observance without
5 undue hardship, as defined in subdivision-~~(t)~~ (u) of Section 12926,
6 on the conduct of the business of the employer or other entity
7 covered by this part. Religious belief or observance, as used in
8 this section, includes, but is not limited to, observance of a Sabbath
9 or other religious holy day or days, reasonable time necessary for
10 travel prior and subsequent to a religious observance, and religious
11 dress practice and religious grooming practice as described in
12 subdivision-~~(p)~~ (q) of Section 12926.

13 (2) An accommodation of an individual's religious dress practice
14 or religious grooming practice is not reasonable if the
15 accommodation requires segregation of the individual from other
16 employees or the public.

17 (3) An accommodation is not required under this subdivision
18 if it would result in a violation of this part or any other law
19 prohibiting discrimination or protecting civil rights, including
20 subdivision (b) of Section 51 of the Civil Code and Section 11135
21 of this code.

22 (m) For an employer or other entity covered by this part to fail
23 to make reasonable accommodation for the known physical or
24 mental disability of an applicant or employee. Nothing in this
25 subdivision or in paragraph (1) or (2) of subdivision (a) shall be
26 construed to require an accommodation that is demonstrated by
27 the employer or other covered entity to produce undue hardship,
28 as defined in subdivision-~~(t)~~ (u) of Section 12926, to its operation.

29 (n) For an employer or other entity covered by this part to fail
30 to engage in a timely, good faith, interactive process with the
31 employee or applicant to determine effective reasonable
32 accommodations, if any, in response to a request for reasonable
33 accommodation by an employee or applicant with a known physical
34 or mental disability or known medical condition.

35 (o) For an employer or other entity covered by this part, to
36 subject, directly or indirectly, any employee, applicant, or other
37 person to a test for the presence of a genetic characteristic.

38 (p) *Nothing in this section shall be interpreted as preventing*
39 *the ability of employers to identify members of the military or*

1 *veterans for purposes of awarding a veteran's preference as*
2 *permitted by law.*

3 *SEC. 5. Section 4.5 of this bill incorporates amendments to*
4 *Section 12940 of the Government Code proposed by both this bill*
5 *and Senate Bill 292. It shall only become operative if (1) both bills*
6 *are enacted and become effective on or before January 1, 2014,*
7 *(2) each bill amends Section 12940 of the Government Code, and*
8 *(3) this bill is enacted after Senate Bill 292, in which case Section*
9 *4 of this bill shall not become operative.*

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